

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	MM DOCKET NO. 97-128
)	
MARTIN W. HOFFMAN,)	
Trustee-in-Bankruptcy for Astroline)	File No. BRCT-881201LG
Communications Company Limited)	
Partnership)	
)	
For Renewal of License of)	
Station WHCT-TV, Hartford, Connecticut)	
)	
SHURBERG BROADCASTING OF HARTFORD)	File No. BPCT-831202KF
)	
For Construction Permit for a New)	
Television Station to Operate on)	
Channel 18, Hartford, Connecticut)	

RECEIVED

OCT 20 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

SHURBERG BROADCASTING OF HARTFORD

EXHIBIT NO. 139

Deposition Transcript of
Dale R. Harburg

Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Alan Shurberg d/b/a
Shurberg Broadcasting of Hartford

FEDERAL COMMUNICATIONS COMMISSION (FCC)

-----X
In re :
: MM Docket No. 97-128
MARTIN HOFFMAN et al., : File No. BRCT-881201LG
: File No. BPCT-831202KF
:
-----X

Washington, D.C.

Thursday, August 27, 1998

Deposition of

DALE R. HARBURG

a witness, called for examination by counsel
for Shurberg Broadcasting of Hartford,
pursuant to notice and agreement of counsel,
beginning at approximately 10:05 a.m. at
Bechtel & Cole, 1901 L Street, N.W.,
Washington, D.C., before Michele M. Howell,
notary public in and for the District of
Columbia, when were present on behalf of the
respective parties:

BETA

1 APPEARANCES:

2 On behalf of Shurberg Broadcasting of Hartford:

3 HARRY F. COLE, ESQUIRE
4 Bechtel & Cole, Chartered
5 1901 L Street, N.W., Suite 250
6 Washington, D.C. 20036
7 (202) 833-4190

8 On behalf of Richard Ramirez:

9 KATHRYN R. SCHMELTZER, ESQUIRE
10 Fisher Wayland Cooper Leader & Zaragoza
11 2001 Pennsylvania Avenue, N.W., Suite 400
12 Washington, D.C. 20006-1851
13 (202) 775-3547

14 On behalf of the Witness:

15 BONNIE R. GERHARDT
16 Baker & Hostetler, LLP
17 Washington Square, Suite 1100
18 1050 Connecticut Avenue, N.W.
19 Washington, D.C. 20036-5304
20 (202) 861-1500

21

22

23

24

25

26

27

28

* * * * *

C O N T E N T S

1		
2	EXAMINATION BY:	PAGE
3	Counsel for Shurberg Broadcasting	5
4	of Hartford	
5	Counsel for Richard Ramirez	55
6	HARBURG DEPOSITION EXHIBITS:	
7	No. 1 - May 5, 1987, Letter, Ramirez to	11
8	Hart	
9	No. 2 - July 7, 1987, Memorandum, Baker &	12
10	Hostetler to Broadcast Clients	
11	No. 3 - July 7, 1987, Letter, Hart to	15
12	Sostek, Attachments	
13	No. 4 - Ownership Report, Bates Stamped	16
14	BH 0810 to BH 0812	
15	No. 5 - Ownership Report, Bates Stamped	20
16	BH 0812	
17	No. 6 - Handwritten Notes	23
18	No. 7 - July 28, Letter, Bacon to Harburg	28
19	No. 8 - July 29, 1987, Letter, Harburg to	29
20	Ramirez	
21	No. 9 - July 31, 1987, Fax, Harburg to	32
22	Bacon with Handwritten Note	
	No. 10 - July 31, 1987, Fax, Harburg to	38
	Bacon	
	No. 11 - Ownership Report, Bates Stamped	42
	BH 0796 to BH 0809	

BETA REPORTING

(202) 638-2400

1-800-522-2382

(703) 684-2382

1	HARBURG DEPOSITION EXHIBITS (CONT'D):	PAGE	4
2	No. 12 - August 3, 1987, Letter, Hart to	49	
3	Tricarico, Attachments		
4	No. 13 - Memorandum, Harburg to Hart	53	
5	No. 14 - Memorandum Opinion and Order	54	
6			
7	* * * * *		
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			

1 P R O C E E D I N G S

2 Whereupon,

3 DALE L. HARBURG

4 was called as a witness and, having been
5 first duly sworn, was examined and testified
6 as follows:

7 EXAMINATION BY COUNSEL FOR SHURBERG

8 BROADCASTING OF HARTFORD

9 BY MR. COLE:

10 Q Would you state your name and
11 address for the record?

12 A Dale Harburg, 10624 Stable Lane,
13 Potomac, Maryland, 20854.

14 Q Good morning, Ms. Harburg. I am
15 Harry Cole, counsel for Shurberg Broadcasting
16 of Hartford. I understand you are appearing
17 here this morning pursuant to subpoena served
18 in connection with the WHCT proceeding with
19 the FCC?

20 A Yes.

21 Q The subpoena requested that you
22 review your files in search of documents and

1 items set forth in the files.

2 Did you search your files?

3 A I do not have any communications
4 file.

5 Q Fair enough. You have been served
6 with the subpoena approximately a month ago,
7 within the past month or thereabouts.

8 Prior to receiving the subpoena, do
9 you recall when the last time you had spoken
10 with anyone about Astroline Communications
11 Company Limited Partnership was?

12 A I left Baker & Hostetler in 1991,
13 and have not talked to anybody about this
14 matter since then.

15 Q Since receiving the subpoena, have
16 you spoken with anybody about Astroline
17 Communications Company at all?

18 A I talked to Bonnie Gerhardt about
19 the scheduling of this deposition, and their
20 male associate.

21 Q Mr. Wick?

22 A Yes.

1 Q But you haven't spoken with any
2 principals of Astroline or any
3 representatives of Astroline?

4 A No.

5 Q Are you an attorney?

6 A I am.

7 Q When were you admitted to practice?

8 A 1985.

9 Q In the District?

10 A Yes.

11 Q Have you worked in the private
12 practice of law since 1985?

13 A Yes.

14 Q Could you just run down briefly
15 your private practice?

16 A I worked at Baker & Hostetler
17 from 1985 to approximately 1991. I worked at
18 Vorys, Sater, Seymour & Pease from 1981 to
19 approximately 1993 or 1994, and took some
20 time off.

21 In the last year and a half, I have
22 been in the law firm of Sughrue, Mion, Zinn,

1 Macpeak & Seas on a part time basis.

2 Q That is since 1996, 1997?

3 A Yes.

4 Q While you were at Baker &
5 Hostetler, I will preface this so we all
6 understand, I will only talk about the period
7 of time you were at Baker & Hostetler.

8 While there, did you have occasion
9 to provide legal services to Astroline
10 Services Communication Limited Partnership?

11 A I don't recall.

12 Q What was your position at Baker?

13 A I was hired as an associate. I was
14 there -- my time there was as an associate.

15 Q Did you specialize in any
16 particular practice area while at Baker?

17 A When I was at Baker, I practiced
18 mostly in the communications and in the
19 trademark area.

20 Q When you say communications, what
21 do you mean?

22 A For my first couple of years of

1 practice there, I did some communications
2 law, helped out in some comparative hearings,
3 I believe. Finally, the routine FCC
4 documents.

5 Q But it was an FCC practice as
6 opposed to some other kind of communications
7 practice?

8 A As I recall. It was a long time
9 ago.

10 Q Do you recall whether it involved
11 broadcasting clients or non-broadcasting
12 clients?

13 A I believe it was broadcasting
14 clients.

15 Q Do you recall any of the attorneys
16 that you worked with in this communications
17 practice while at Baker?

18 A Don Zeifang, Ken Howard, Ken Skall
19 and Tom Hart.

20 Q Did you also work with an attorney
21 named David Dudley?

22 A He was an associate while I was

1 there.

2 Q Dan Palmer?

3 A He was an associate while I was
4 there.

5 Q Linda Bocchi?

6 A She was an associate while I was
7 there.

8 Q Did you work with any of those
9 people that you can recall?

10 A I don't recall if we worked on
11 specific matters together. We were there at
12 firm together.

13 Q Do you recall working on an
14 ownership report for Astroline? When I use
15 the term Astroline to avoid the full long
16 line, I mean Astroline Communications Limited
17 Partnership.

18 Do you remember working on a
19 partnership report for Astroline in the
20 summer of 1987?

21 A I certainly don't recall any time
22 period of any time I worked on anything.

1 Ms. Gerhardt passed me a document
2 yesterday that appeared to be an ownership
3 report that had a fax cover sheet from me to
4 somebody, so, that document indicates that I
5 had, at least, seen an ownership report. I
6 don't have any independent recollection of it
7 other than that document.

8 MR. COLE: Let me show you what is
9 a one-page document on the stationery of
10 Richard P. Ramirez. It has some handwritten
11 notations on it.

12 (Harburg Deposition Exhibit
13 No. 1 was marked for
14 identification.)

15 BY MR. COLE:

16 Q Have you had a chance to look at
17 that?

18 A I have.

19 Q At the bottom half, there is a
20 handwritten notation which reads: "Dale, are
21 we ready to begin the annual ownership report
22 for WHCT-TV? Please review." Some initials.

1 Do you know whose initials those
2 are?

3 A The first one looks to me like a T,
4 and it may be Tom Hart. I am not absolutely
5 sure.

6 Q Do you know if you were the Dale
7 who was the addressee of this?

8 A I assume that I am.

9 Q Does that refresh your recollection
10 about working on the ownership report,
11 starting some time in May of '87?

12 A Yeah. It doesn't refresh my
13 recollection. It just tells me that Hart may
14 have written me a note.

15 (Harburg Deposition Exhibit
16 No. 2 was marked for
17 identification.)

18 BY MR. COLE:

19 Q This is a one-page document on
20 Baker & Hostetler stationery, a memorandum
21 item addressed to Broadcast Clients dated
22 July 7, 1987 from Baker Hostetler, some

1 handwritten notations on the bottom.

2 I noted in particular that in
3 numbered paragraph 2 it says: "Ownership
4 reports must be filed with the FCC by
5 August 3, 1987. If you need assistance
6 preparing or filing this report, please
7 contact Dale or Jack Whitley as soon as
8 possible."

9 Does that refresh your recollection
10 at all about your involvement or preparation
11 of ownership reports?

12 A Ownership reports in general or
13 Astroline?

14 Q Ownership reports in general.

15 A It refreshes my memory that I was
16 involved for some of the firm's clients in
17 either reviewing or filing issues programs
18 lists and maybe ownership reports. But
19 nothing more specific than that.

20 Q When you say maybe ownership
21 reports, why are you --

22 A Because I seem to recall that I, at

1 some period of time, I might have had more --
2 had responsibility for the issues programs
3 lists. But I am not sure.

4 Q Now, I direct your attention,
5 please, to the handwritten notation at the
6 bottom of the page which appears to have been
7 signed by Mindy Vasquez, communications
8 director.

9 Are you familiar with the name
10 Mindy Vasquez?

11 A I am not.

12 Q The notation says: "Per telephone
13 conversation on 7/14/1987 with attorney Dale
14 Harburg, they will be preparing ownership
15 report on behalf of WHCT-TV 18."

16 Do you recall talking to
17 Ms. Vasquez on July 14th?

18 A No, I do not.

19 MR. COLE: I will show you a series
20 of documents which are identical,
21 essentially, I believe are.

22 One is a letter dated July 7, 1987

1 from Mr. Hart to Mr. Sostek. One is a letter
2 dated July 7, '87 from Mr. Hart again to
3 Mr. Kerchick, and a third is a letter dated
4 July 7, '87 from Mr. Hart to Mr. Ramirez.

5 (Harburg Deposition Exhibit
6 No. 3 was marked for
7 identification.)

8 BY MR. COLE:

9 Q Feel free to look at the entirety
10 of everything, if you like, although I am
11 primarily interested in the cover page of
12 each one, which is the Thomas Hart letters to
13 the various individuals.

14 A Yeah.

15 Q But again, if I ask any question
16 that you think it would be helpful for you to
17 look at more of the document or take more
18 time, feel free to do so.

19 In the final paragraph of each of
20 these letters it refers to, it states:
21 "Please complete the questionnaire," which is
22 the attachment to the letter, "and return it

1 to Dale Harburg by July 18, 1987."

2 Do you see that?

3 A I do.

4 Q Does that refresh your recollection
5 at all about your involvement in the
6 preparation of an ownership report in 1987 on
7 behalf of Astroline?

8 A It does not.

9 (Harburg Deposition Exhibit
10 No. 4 was marked for
11 identification.)

12 BY MR. COLE:

13 Q Exhibit 4 appears to be a draft
14 ownership report, FCC Form 323, which is two
15 separate pages, but the back of the second
16 page, the back of the first page has printing
17 on it. I ask you to take a look at that.

18 Do you recognize the document?

19 A I do not recognize the document.
20 Well, I recognize that it is an ownership
21 report.

22 Q Is that your handwriting in the

1 upper left hand corner?

2 A It is.

3 Q Also, down at the lower right hand
4 corner, there is some typed in verbiage which
5 is crossed out and also the word "however,"
6 which is handwritten.

7 Is that your handwriting on that as
8 well?

9 A It appears to be.

10 Q On page 2, the back of page 1,
11 there is also some handwritten information:
12 "Amended limited partnership agreement and
13 certificate."

14 Is that your handwriting?

15 A It appears to be.

16 Q Going back to page 1, do you know
17 whether that is Mr. Ramirez' handwriting on
18 the signature line?

19 A It looks as though it is his
20 signature. I don't have any independent
21 knowledge of that.

22 Q Is it safe to conclude that this is

1 a draft ownership report that has been
2 corrected by you by hand?

3 A It is safe to conclude that this is
4 my handwriting on here. I really have no
5 independent recollection of working on this
6 document other than seeing my handwriting on
7 here.

8 Q Look down at the bottom on the
9 lower right hand corner. On page 1, there is
10 a question, which reads: "If a limited
11 partnership, is certification statement
12 included as in Instructions 4?"

13 Do you see that language?

14 A Yes.

15 Q It was originally typed in "no" but
16 changed to "yes," does that appear to be?

17 A Yes.

18 Q Do you recall anything about that
19 change?

20 A No, not at all.

21 Q With respect to the typed verbiage
22 immediately below that, do you recall whether

1 your you were responsible for adding that
2 verbiage?

3 A I have no recollection.

4 Q Do you know why the answer was
5 changed from no to yes?

6 A I have no idea.

7 Q Look over on page 2, please. The
8 handwritten notation at the top, or entry at
9 the top which reads: "Amended limited
10 partnership agreement and certificate."

11 The next column reads, "N/A" and
12 date of execution, I believe of 9/10/85.

13 Do you see that language?

14 A I do.

15 Q Am I correct in looking at this
16 form there is only one other document that
17 appears to have been written in at some
18 point, although it is illegible on this form.

19 Do you agree with that?

20 A I see one line that is illegible, a
21 second line that is illegible. I don't know
22 if that refers to one document or two.

1 (Harburg Deposition Exhibit
2 No. 5 was marked for
3 identification.)

4 BY MR. COLE:

5 Q You show you a one page, double
6 sided, unexecuted FCC ownership report for
7 Astroline Communications Company Limited
8 Partners. This has the handwritten notation
9 down in the lower right-hand corner which
10 says: "Type in, see Exhibit 1."

11 Do you see that?

12 A I do.

13 Q Is that your handwriting?

14 A It appears to be.

15 Q Also on the back, in paragraph 6,
16 which calls for description of certain
17 contracts or instruments, there are two
18 contracts typed in; are we correct on that?

19 A I see two documents typed in.

20 Q Then below that, I see additional
21 handwritten verbiage, which appears to
22 describe some additional agreements.

1 Do you see that language?

2 A I do.

3 Q Is that your handwriting?

4 A It appears to be.

5 Q Do you recall the circumstances by
6 which you came to make these notations on
7 this document?

8 A I do not.

9 Q Can you tell me whether this is a
10 later draft of what we have identified as
11 Deposition Exhibit Number 4? Deposition
12 Exhibit Number 4 had a signature appearing to
13 be Mr. Ramirez' dated July 20, 1987?

14 A This one?

15 Q Yes.

16 A I have no independent recollection
17 other than by looking at some of the changes
18 on the prior exhibit seems to have been made
19 on this exhibit, but I have no independent
20 recollection of that.

21 MS. SCHMELTZER: Harry, I notice
22 that Deposition Exhibit Number 5 bears the

1 same number as the third page of Harburg
2 Deposition Exhibit Number 4, BH 0812.

3 MR. COLE: Oh, okay. Although,
4 that may have been added on. It was BH 0812,
5 it obviously is an identical document. I am
6 not sure it should have been stapled to that.
7 It is entirely possible since I just got
8 these out of the paper files, not necessarily
9 stapled together there.

10 BY MR. COLE:

11 Q Referring to page 2, the second
12 side of Deposition Exhibit Number 5, do you
13 know where you would have gotten the
14 information which was handwritten in?

15 A I have no recollection.

16 Q Did you have any responsibility at
17 Baker for maintaining ownership report files
18 for any clients?

19 A I don't recall.

20 Q Do you recall who would have
21 actually done the typing on a report like
22 this? Who would have physically taken the

1 page, put it in the typewriter and typed that
2 language on?

3 A Work that I had done, if I gave it
4 to somebody, it would have been to my
5 secretary. During this time period, I don't
6 recall who my secretary would have been. I
7 am sorry.

8 MR. COLE: I will never tell.

9 (Harburg Deposition Exhibit
10 No. 6 was marked for
11 identification.)

12 BY MR. COLE:

13 Q Let me show you Deposition Exhibit
14 Number 6, which is a multipage document on
15 long, legal sized paper, which consists of
16 handwritten notations.

17 The first page is approximately
18 three quarters, the writing at the top three
19 quarters, handwritten.

20 The next three pages appear to
21 consist of a memorandum dated 7/24/87
22 addressed to Dale from someone whose

1 signature has been crossed off. There are
2 also handwritten notations in a different
3 writing in the margin.

4 Directing your attention to the
5 first page, is that your handwriting?

6 A It appears to be.

7 Q Directing your attention to the
8 second page, the body of the text, that is
9 the memorandum addressed to Dale.

10 Do you recognize that handwriting?

11 A I do not.

12 Q Would it refresh your recollection
13 if I advised you that Mr. Dudley has
14 testified that he believes it appears to be
15 his handwriting?

16 A It would not refresh my memory. I
17 am not that familiar with his handwriting.

18 Q Do you remember getting a
19 memorandum from Mr. Dudley about the
20 Astroline ownership report?

21 A No independent recollection other
22 than this.

1 Q Is that your handwriting at the top
2 above where it says Dale, I believe it says:
3 Where did we get this info?

4 A That appears to be my handwriting.

5 Q Is that also your handwriting in
6 the margin, a reference to WHCT, Carter Bacon
7 and figures and percentages?

8 A That appears to be my handwriting.

9 Q Who is Carter Bacon?

10 A That name sounds vaguely familiar
11 to me, but I don't recall who he is.

12 Q Are you familiar with the law firm
13 of Peabody & Brown in Boston?

14 A No.

15 Q Are you familiar with an attorney
16 named William Lance?

17 A No.

18 Q Do you recall speaking with
19 Mr. Dudley about the preparation of the
20 ownership report for Astroline sometime in
21 July of '87?

22 A No.

1 Q Do you recall speaking with anybody
2 in July of '87 about the preparation of
3 ownership report for Astroline?

4 A Apart from these documents, I have
5 no independent recollection.

6 Q Now, referring to page 1, the top
7 page, at the very top there is a numbers one,
8 two, three circled. There is nothing next to
9 two and three. Next to number one there is
10 the name O'Brien.

11 Do you see that?

12 A I do.

13 Q Do you know who O'Brien refers to?
14 What that refers to?

15 A I have no idea.

16 Q Do you have any idea what that
17 notation at the top, one, two, three,
18 notation was about?

19 A I do not.

20 Q Just a little bit lower on the page
21 there is another list of four numbered items,
22 and I believe the first one reads, correct me

1 if I am wrong, but it is: Is there an
2 amended LPA for ACC Ltd. partners?

3 A That is how I read that.

4 Q Does the term LPA, is that an
5 abbreviation for limited partnership
6 agreement?

7 A I am assuming that is what it is.

8 Q Do you recall why you wrote that
9 question there?

10 A No, I don't.

11 Q Would you have written that
12 question if you already had access to an
13 amended limited partnership agreement for
14 Astroline in Baker & Hostetler's files?

15 A I don't know. I would just be
16 speculating.

17 Q Do you recall whether you had
18 occasion in or around this time to review
19 Baker & Hostetler's files to see if they
20 contained a limited partnership agreement for
21 Astroline?

22 A I have no recollection.

1 (Harburg Deposition Exhibit
2 No. 7 was marked for
3 identification.)

4 BY MR. COLE:

5 Q This is a letter, one page in
6 length, dated July 28, 1987 addressed to you
7 from Carter S. Bacon. It was to be delivered
8 to you in care of Mr. Hart.

9 Do you see that?

10 A I do.

11 Q It is numbered paragraph number one
12 indicates that Mr. Bacon, who was
13 transmitting to you a copy of Astroline
14 Communications Company Limited Partnership's
15 amended restated limited partnership
16 agreement and first amendment.

17 Do you see that?

18 A I do.

19 Q Do you know why Mr. Bacon would
20 have been sending that document to you on
21 July 28, 1987?

22 A I have no independent recollection.

1 The first paragraph says as we discussed. It
2 would indicate we had a telephone
3 conversation, but no independent
4 recollection.

5 Q Do you know why Mr. Bacon would be
6 sending you a document in care of Mr. Hart?

7 A I do not.

8 Q Did Mr. Hart routinely receive
9 documents on your behalf while you were at
10 Baker Hostetler?

11 MS. GERHARDT: Objection.

12 BY MR. COLE:

13 Q Did Mr. Hart routinely receive
14 documents on your behalf in connection with
15 the Astroline matter while you were at Baker?

16 A I have no recollection.

17 (Harburg Deposition Exhibit
18 No. 8 was marked for
19 identification.)

20 BY MR. COLE:

21 Q I will show you another document,
22 multipage document, the first page of which

1 is a letter. Let me ask you is that your
2 signature on that letter?

3 A Yes.

4 Q From you addressed to Mr. Ramirez
5 dated July 29, 1987. It reads: "Enclosed is
6 the revised ownership report for WHCT,
7 Hartford, Connecticut. Please review the
8 report for accuracy and sign and date page 1
9 and Exhibit 1 where indicated. Please return
10 to me by overnight mail for delivery on
11 Friday, July 31, 1987."

12 Did I read that correctly?

13 A Yes.

14 Q Please read that, and I will ask
15 you a few questions about it.

16 A Okay.

17 Q So is it reasonable to conclude
18 from this document that as of July 29, 1987,
19 you had prepared a revised ownership report
20 which you thought Mr. Ramirez would be able
21 to sign?

22 A It is reasonable to conclude that I

1 sent Mr. Ramirez a revised ownership report.
2 I just don't have any recollection of
3 preparing the report.

4 Q I understand that. But you
5 wouldn't have sent him a document for
6 signature if you didn't think it was ready to
7 be signed; is that correct?

8 A Correct, although it says please
9 review the report for accuracy and sign. So
10 I guess I was asking him to confirm that it
11 was accurate before we signed it.

12 Q Let me refer you to the page 1 of
13 the ownership report form, the lower
14 right-hand corner. The certification
15 question we asked about the lower half of the
16 form: "If a limited partnership, is
17 certification statement included as in
18 Instruction 4?"

19 Here it says: "Yes, see
20 Exhibit 1." I will refer you to Exhibit 1,
21 which is a one page, single page entitled
22 certification. I will ask you to read that.

1 A To myself?

2 Q Yes, read it to yourself.

3 A I have read it.

4 Q Am I correct that the first
5 sentence as written constitutes a
6 certification that Astroline Company, as
7 distinct from Astroline Communications,
8 Astroline Company was a limited partner
9 actively involved in the limited media
10 activities of Astroline Communications
11 Limited Partnership?

12 A Could you repeat that?

13 MR. COLE: Sure.

14 (The reporter read the record as
15 requested.)

16 THE WITNESS: It appears to say
17 that.

18 (Harburg Deposition Exhibit
19 No. 9 was marked for
20 identification.)

21 BY MR. COLE:

22 Q This is a multipage document, the

1 first page of which is a telecopier cover
2 letter form dated 7/31/87 indicating it was
3 from you to Carter Bacon. Attached to it is
4 another draft of the Astroline ownership
5 report form.

6 In the upper right-hand corner of
7 the front page there is some handwritten
8 notations which, I believe read: "Dale, here
9 are my comm," cut off in the photocopying,
10 "let's have a conf call with Carter and Rich
11 on Monday a.m. Please see me first.
12 Thanks."

13 That appears to be the same
14 initials which we saw earlier which we
15 tentatively concluded were Tom Hart's?

16 A I believe so.

17 Q I also suggest, so that we will all
18 understand each other, in 1987, July 31st,
19 occurred on a Friday.

20 A Okay.

21 Q The following Monday then would be
22 August 3rd. Do you agree with me on that?

1 A Sure.

2 Q Assuming my predicate, the
3 conclusion is adequate. Would it be
4 reasonable to understand Mr. Hart's
5 handwritten notation in the upper right-hand
6 corner as an indication that you had given
7 him a copy of this fax cover sheet and the
8 attachment at the same time, on or about the
9 same time that you sent it to Mr. Bacon?

10 A I have no recollection of that.

11 Q But, in any event, it is accurate
12 to say that Mr. Hart wrote you a note
13 transmitting his comments about the draft and
14 returned it to you presumably sometime prior
15 to Monday August 3rd?

16 A I don't see any August 3rd. I just
17 see Monday a.m. So I don't know that it is
18 that Monday.

19 Q Take a look at the firm form,
20 itself, please. In the lower right-hand
21 corner, I want to focus your attention on
22 paragraph 5: "If a limited partnership

1 certification", that has now become no in the
2 lower right-hand corner.

3 Do you see that?

4 A I do see that.

5 Q The reference to any Exhibit 1 has
6 apparently been deleted; is that correct?

7 A It appears that way.

8 Q Do you know why that was changed?

9 A I have no recollection.

10 Q Now, go to page 2, please.

11 Actually pages two and three because they are
12 copies of the same page of the form but
13 slightly different information.

14 Refer back to Deposition Number 5,
15 which is one single page. Is it correct that
16 the changes that you had indicated in
17 handwriting on page 2 of that appear to have
18 been inserted in this version?

19 That is to say, the various letter
20 agreements which you have written in have now
21 been typed on to the form?

22 A It appears this that the letter

1 agreements that I had put in handwriting had
2 been added on those two pages of the form.

3 Q Now, look through the rest of the
4 form and I just want to call your attention
5 to the fact that there are a number of
6 handwritten notations at various parts of the
7 rest of the form.

8 For your ease of reference, I will
9 tell you there are two on page, the page
10 number BH 0817, to the word "address,"
11 question mark appears to be written in.

12 Page 818 there appears to be a
13 correction on the spelling of Massachusetts.

14 Page 821 there is the word "were"
15 has been crossed out and the word "are," has
16 been written in.

17 Page 822 there are some notations
18 concerning addresses, same with 823, the same
19 on page 827, 828. Do you know whose
20 handwriting that is?

21 A I am not sure.

22 Q Is it Mr. Hart's?

1 A I don't remember that.

2 Q Is it yours?

3 A No.

4 Q Do you recall if Mr. Hart gave you
5 any comments on a separate piece of paper or
6 a separate document that would not have been
7 attached to what we have described as
8 Deposition Exhibit Number 9?

9 A No, no recollection.

10 Q Do you recall talking with Mr. Hart
11 about this draft?

12 A I do not.

13 Q Who made the drawings of the notes?

14 A I don't know.

15 MR. COLE: Off the record.

16 (Discussion off the record)

17 BY MR. COLE:

18 Q Mr. Hart's notation in the upper
19 right hand corner said he wanted a conference
20 call with Carter and Rich at Monday
21 at 9:00 a.m.

22 Do you know who that was?

1 A I assume Carter Bacon.

2 Q Do you know who Rich was?

3 A I assume it was Rich Ramirez.

4 Q You don't know what Monday a.m.
5 would have been?

6 A I do not.

7 Q Do you know whether the conference
8 call involving some or all of those
9 individuals was held?

10 A I do not recall.

11 MR. COLE: I will show you this
12 document.

13 (Harburg Deposition Exhibit
14 No. 10 was marked for
15 identification.)

16 BY MR. COLE:

17 Q This is another, different copy of
18 the document we just looked at. Again it is
19 a copy of the same title sheet, it appears,
20 without Mr. Hart's notations and without the
21 musical note.

22 It includes a copy of the draft

1 ownership report, but without the handwritten
2 notations we just looked at and with some
3 different handwritten notations on it.

4 On page BH 830, which is the first
5 page of the ownership report form there is a
6 handwritten notation which says: "No comma
7 in names." Is that your handwriting?

8 A It appears to be.

9 Q On page 839, BH 839 in the upper
10 margin there appears to be some notations
11 which I believe is "Kerchick,"
12 K-e-r-c-h-i-c-k.

13 Do you see that?

14 A Yes.

15 Q Is that your handwriting as well?

16 A I am not sure about that one.

17 Q On the front of the this document
18 there is a notation at the bottom portion of
19 the page which appears to reads "Carter,"
20 underlined, "he votes not to file because of
21 the implications."

22 Do you see that?

1 A I do.

2 Q Is that your handwriting?

3 A It appears to be.

4 Q Do you recall what caused you to
5 make that notation?

6 A I have no recollection.

7 Q Do you know if you spoke to
8 Mr. Bacon about this ownership report?

9 A I have no independent recollection,
10 other than these documents.

11 Q Do you recall whether you spoke
12 with Mr. Ramirez about this report?

13 A No recollection.

14 Q Is it safe to say, based on the
15 documents you have looked at so far, that as
16 of July 31, '87, you had sent out at least
17 one and probably more than one draft
18 ownership reports to Mr. Ramirez which he had
19 apparently signed and that you had revised
20 that report a couple of times?

21 A I sent to Mr. Ramirez?

22 MS. SCHMELTZER: I am going to

1 object to the extent you say he had
2 apparently signed. All of these ownership
3 reports were not all signed by Mr. Ramirez.

4 MR. COLE: He did not sign all of
5 the drafts.

6 MS. SCHMELTZER: He didn't sign the
7 certification that is attached to Harburg
8 Deposition Exhibit Number 8, either.

9 BY MR. COLE:

10 Q Mr. Ramirez had apparently signed
11 Deposition Exhibit Number 4. Is that
12 correct?

13 A Mr. Ramirez appears to have signed,
14 yes.

15 Q The signature there is dated
16 July 20, 1987; is that correct?

17 A It appears to be.

18 Q You had also, I believe,
19 established, sent him by letter dated
20 July 29th, another copy to be signed?

21 A Correct.

22 Q Which copy reflected changes in the

1 company ownership report from the copy he had
2 signed or that was dated July 20, 1987?

3 A Correct.

4 MR. COLE: Let me show you this.

5 (Harburg Deposition Exhibit

6 No. 11 was marked for

7 identification.)

8 BY MR. COLE:

9 Q This is an ownership report. Is
10 that Mr. Ramirez' signature as far as you can
11 tell?

12 A It appears to be.

13 Q That is dated July 31, '87, is it
14 not?

15 A Correct.

16 Q It appears to be Mr. Ramirez 's
17 signature dated July 31, 1987.

18 Do you recall when Mr. Ramirez
19 provided this to you for filing with the FCC?

20 A I have no recollection.

21 Q Do you know how Mr. Ramirez came to
22 obtain this report as typed up here for

1 signature?

2 A I do not recall.

3 Q Let me refer you to page 808,
4 BH 808 way at the back of this document. It
5 is a document entitled Exhibit 3:
6 Certification.

7 It reads: "Astroline Company
8 certifies that no limited partner will be
9 actively involved in the media activities of
10 Astroline Company."

11 It has a signature line for Fred
12 Boling, general partner. Do you know who
13 Fred Boling was?

14 A I do not know.

15 Q There are some handwritten
16 notations on this apart from Mr. Boling's
17 signature. Are those in your handwriting?

18 A They appear to be, yes.

19 Q Am I correct that the notation
20 immediately under Mr. Boling's signature say:
21 "Type in a date here opposite Boling's
22 signature with the date July 20, 1987."?

1 A Yes.

2 Q Immediately left to that:

3 "Change 3," an arrow, "4 with whiteout."

4 A Yes.

5 Q The notation immediately above the
6 text of the certification, again help me with
7 this: "All limited partners which are not
8 also general partners." I believe that is
9 what it reads.

10 A It says "all" or "are" all limited
11 partners which are not also general partners.

12 Q Flip over to the next page, please.
13 That is a document entitled Exhibit 4,
14 certification. That reads in its entirety:
15 "Astroline Company certifies that no limited
16 partner who is not also a general partner
17 will be actively involved in the media
18 activities " typographical error, "of Astroline
19 Company."

20 This one is over the signature of
21 Herbert A. Sostek, general partner,
22 dated 7/29/87; is that correct?

1 A Yes.

2 Q Do you recall the circumstances
3 which lead to the creation of these two
4 certifications?

5 A I do not.

6 Q Do you know why, with respect to
7 Mr. Boling's certification, you would have
8 instructed someone to type in the date of
9 July 20, 1987?

10 A I don't know.

11 Q Going back to the Boling
12 certification page, page 808. With reference
13 to the handwritten notation above the text,
14 that is: "All or are limited partners which
15 are not also general partners."

16 Do you know what that means?

17 A I do not.

18 Q Do you know why you wrote it in?

19 A I do not.

20 Q Do you know when you wrote it
21 there?

22 A I do not.

1 Q To the best of your recollection,
2 did you speak with anybody about the
3 preparation of this document?

4 A I have no recollection whatsoever
5 about this document.

6 Q Is it fair to say that you have
7 been the person primarily responsible for the
8 preparation of the Astroline ownership report
9 in July of 1987, based on the documents you
10 reviewed today?

11 A Based on the documents, it looks
12 like I had some involvement in the
13 preparation of the ownership report. I have
14 no recollection of whether other people were
15 involved as well.

16 Q Do you recall whether at any time
17 during July of '87, while you were involved
18 in the preparation of this ownership report,
19 anyone at all told you that a Court of
20 Appeals decision would interfere in any way
21 with the preparation of this report?

22 A I have no recollection of that

1 whatsoever.

2 Q Do you have any reason to believe
3 that a Court of Appeals decision did
4 interfere in any way with the preparation of
5 the report?

6 A I have no knowledge of that.

7 Q During the period of time that you
8 were working on or were involved in the
9 preparation of the Astroline ownership report
10 in July of '87, did anybody at all ever tell
11 you that the death of Joel Gibbs would
12 interfere in any way with the preparation of
13 this report?

14 A I have no recollection of that.

15 Q Do you know who Joel Gibbs was?

16 A I think I saw his name on these
17 documents, but I have no independent
18 recollection.

19 Q Do you have any reason to believe
20 that the death of Joel Gibbs, did, in fact,
21 interfere in any way in the preparation of
22 the report for July of 1987?

1 A I have no recollections.

2 Q During the same time period, that
3 is the period of your involvement in the
4 preparation of the Astroline ownership
5 reports in July of 1987, did anybody ever
6 tell you that some internal reorganization of
7 Astroline would interfere in any way with the
8 preparation of the ownership report?

9 A No, no recollection.

10 Q Do you have any reason to believe
11 that any internal reorganization of Astroline
12 did, in fact, interfere in any way with the
13 preparation of the ownership report?

14 A No, recollection.

15 Q Do you see anything in any of the
16 documents you have been shown this morning
17 which would indicate any internal
18 reorganization might have interfered with the
19 preparation of the ownership report?

20 A Repeat that.

21 Q Is there anything in any of the
22 documents you have been shown today that

1 would indicate to you that an internal
2 reorganization of Astroline interfered in any
3 way with the preparation of the ownership
4 report?

5 A No.

6 Q Do you know whether an ownership
7 report was, in fact, filed with the FCC on or
8 about August 3, 1987?

9 A No recollection.

10 MR. COLE: Let me show you this.

11 (Harburg Deposition Exhibit
12 No. 12 was marked for
13 identification.)

14 BY MR. COLE:

15 Q This is a letter dated
16 August 3, 1987, addressed to the Secretary of
17 the FCC from Mr. Hart on Baker & Hostetler
18 stationery.

19 For the record, I will say that it
20 consists of a two-page letter, the second of
21 which, the second page of which bears
22 Mr. Hart's signature. Then there is some

1 additional documents which Ms. Schmeltzer has
2 provided to me which may or may not have been
3 filed along with the August 3rd letter. We
4 are not quite sure what was filed with the
5 August 3rd letter.

6 But I am providing you the entire
7 package, just to make sure that you have
8 everything that might be conceivably filed on
9 August 3, 1987, that we are aware of.

10 I ask you to take a look at
11 Mr. Hart's letter and the rest of it, to the
12 extent that you believe that review is
13 necessary to to familiarize yourself with the
14 document.

15 Does this refresh your recollection
16 as to whether or not the ownership report was
17 filed with the FCC on behalf of Astroline on
18 August 3, 1987?

19 A It doesn't refresh my memory. It
20 indicates that this was filed in lieu of the
21 ownership report. But I have no memory of
22 this.

1 Q Did you write this letter?

2 A I don't know.

3 Q Do you know who did write the
4 letter?

5 A I don't know.

6 Q Do you know why Mr. Hart filed this
7 letter in lieu of an ownership report?

8 A I do not.

9 Q Do you recall whether Mr. Hart
10 discussed this letter with you before he
11 filed it?

12 A I do not recall.

13 Q Do you recall whether he discussed
14 it with you after he filed it?

15 A I do not recall.

16 Q Did you discuss this letter with
17 anybody at any time to the best of your
18 recollection?

19 A I do not recall.

20 Q In the letter, that is Mr. Hart's
21 letter, Deposition Exhibit Number 12, in the
22 first paragraph it references in the second

1 sentence or states: "Astroline is currently
2 in the process of resolving a number of
3 matters that have arisen as a result of the
4 recent Court of Appeals Order in *Shurberg v.*
5 *FCC*, No. 84-1600, June 25, 1987."

6 Do you have any idea why Mr. Hart
7 mentioned that particular decision in this
8 letter?

9 A I do not.

10 Q Later in that sentence it refers to
11 the death of Joel A Gibbs, one of the limited
12 partners of Astroline Company.

13 Do you have any idea why Mr. Hart
14 mentioned the death of Mr. Gibbs in this
15 letter?

16 A I do not.

17 Q It finishes that sentence by
18 referring to an internal reorganization.

19 Do you see that?

20 A Yes.

21 Q Do you have any idea why he
22 mentioned that in his letter?

1 A I do not.

2 Q Do you recall that any of those
3 matters, that is the Court of Appeals
4 decision, the death of Mr. Gibbs, or some
5 internal reorganization was ever discussed
6 with you in connection with your work on the
7 preparation of the Astroline ownership
8 report?

9 A I don't recall.

10 (Harburg Deposition Exhibit
11 No. 13 was marked for
12 identification.)

13 BY MR. COLE:

14 Q This is A two page document from
15 Dale R. Harburg to Thomas A. Hart re:
16 minority ownership and tax certificates. It
17 does not have a signature or handwriting on
18 it. But I just want to ask you if you
19 recognize this document?

20 A It appears to be a memo from me to
21 Mr. Hart. I don't have any recollection of
22 it.

1 Q You don't recall when you would
2 have written it?

3 A No.

4 Q Do you recall any of the
5 circumstances which would have caused you to
6 write it?

7 A No.

8 (Harburg Deposition Exhibit
9 No. 14 was marked for
10 identification.)

11 BY MR. COLE:

12 Q Lastly, I will show you a copy of a
13 memorandum and order in the Daytona
14 Broadcasting case that has some handwriting
15 at the top of the first page.

16 I want to ask you is that your
17 handwriting?

18 A It appears to be.

19 Q Do you recall why you would have
20 written the note on the top of that page?

21 A I do not recall.

22 Q Do you recall why you would have

1 been reading this particular case, this
2 decision?

3 A I do not.

4 Q Do you recall any of the
5 circumstances that lead you to write that
6 note?

7 A I do not.

8 Q I have nothing further.

9 MS. SCHMELTZER: I have just a few
10 questions.

11 EXAMINATION BY COUNSEL FOR RICHARD
12 RAMIREZ

13 BY MS. SCHMELTZER:

14 Q Would you refer back to Harburg
15 Deposition Exhibit Number 3, the letter
16 directed to William D. Kerchick?

17 A I have that.

18 Q This letter requests some
19 information of Mr. Kerchick resulting from
20 the death of Joel Gibbs and requests
21 information about the media interests, if
22 any, of the estate of Joel A. Gibbs.

1 Attached to it is a media ownership
2 survey which is not completed.

3 Do you recall whether you ever saw
4 a completed copy of this survey?

5 A I have no recollection.

6 Q I would like you to, in conjunction
7 with that, just hold that, and would you
8 refer to Harburg Deposition Exhibit
9 Number 10. I refer your attention to
10 BH 0839.

11 There is some handwriting up at the
12 top which Mr. Cole asked you about, where it
13 looks like someone wrote in Kerchick.

14 Is that your handwriting?

15 A It might be, but I am not sure
16 about that.

17 Q Does that refresh your recollection
18 at all as to who Mr. Kerchick is or why you
19 might have written that?

20 A No.

21 Q It says under item C, estate of
22 Joel A. Gibbs in care of William Kerchick.

1 Does that refresh your recollection
2 as to whether Mr. Kerchick was the attorney
3 for the estate of Joel Gibbs?

4 A It does not refresh my
5 recollection.

6 Q If you would look at the cover
7 sheet of Harburg Deposition Exhibit
8 Number 10, BH 0829.

9 Mr. Cole asked you about the
10 notation down at the bottom. Right below the
11 language that he asked you about there is a
12 word: "Talked to somebody Brown." Is that
13 your handwriting?

14 A It appears to be.

15 Q Do you know what the initial is
16 before brown?

17 A It looks like a J to me.

18 Q Do you have any ideas who that is?

19 A No.

20 Q Then below that it says "outdated,"
21 is that your handwriting as well?

22 A Yes.

1 Q Do you have any recollection why
2 you wrote "outdated"?

3 A I have no recollection.

4 Q If you would turn to Harburg
5 Exhibit Number 8, that is the July 29, 1997
6 letter sending Mr. Ramirez the ownership
7 report. If you would turn to BH 0848, which
8 is an unsigned certification that is Exhibit
9 Number 1?

10 A I see that.

11 Q Do you recall whether you were
12 responsible for preparing this certification?

13 A I have no recollection.

14 Q Do you recall reviewing any
15 documents before you prepared this
16 certification?

17 A I have no recollection.

18 Q Do you remember speaking to anyone
19 before you prepared this certification?

20 A I have no recollection.

21 MS. SCHMELTZER: That is all I
22 have.

1 MR. COLE: I don't have anything.

2 MS. GERHARDT: I don't have
3 anything. I assume you want to sign it.

4 THE WITNESS: Yes.

5 (Whereupon at 11:05 a.m. the
6 deposition of DALE R. HARBURG
7 was adjourned.)

8 * * * * *

9

10

11

12

13

14

15

16

17

18

19

20

21

22